

Application No.: 10/539,641
Am dt dated: July 7, 2008
Reply to Office Action of: February 4, 2008

REMARKS/ARGUMENTS

This amendment is filed in response to the Final Office Action that was mailed on February 4, 2008. Claims 1-6 and 8-35 were before the Examiner for consideration. In this paper, Claims 1, 26, and 29 have been amended, no claims have been added, and no claims have been canceled. Accordingly, Claims 1-6 and 8-35 remain before the Examiner. No new matter has been added in this amendment.

Summary of the Office Action

The Examiner rejected Claims 1-6 and 8-35 under 35 U.S.C. § 112 as being indefinite. The Examiner rejected Claims 1-6, 8-9, 11, and 35 under 35 U.S.C. § 102(b) as being anticipated by Boschetti (U.S. Patent No. 4,497,317). The Examiner rejected Claims 1-6, 8, 19-20, and 26-29 under 35 U.S.C. § 102(b) as being anticipated by Kindberg et al. (U.S. Patent No. 5,143,082), as evidenced by Ellman (U.S. Patent No. 4,428,375). The Examiner rejected Claims 1, 3, 4-6, 8-13, 26-27, and 29-31 under 35 U.S.C. § 102(e) as being anticipated by Rambo (U.S. Patent No. 6,450,983). The Examiner rejected Claims 2, 28, and 35 under 35 U.S.C. § 103(a) as being unpatentable over Rambo in view of Berman (U.S. Patent No. 5,899,942). The Examiner rejected Claims 14-25 and 32-34 under 35 U.S.C. § 103(a) as being unpatentable over Rambo in view of Balsells (U.S. Patent No. 5,161,806).

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Regarding the Rejections under 35 U.S.C. § 112

Claims 1-6 and 8-35 were rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as inventive. Applicant has amended Claims 1 and 26 to remove reference to a “neutral state” of the ring member and to further define the claimed inventions. Accordingly, Applicant respectfully submits that the rejection under 35 U.S.C. § 112 is inapplicable to Claims 1 and 26. Claims 2-6 and 8-35 each depend from one of Claims 1 and 26. Therefore, the rejections of Claims 2-6 and 8-35 under 35 U.S.C. § 112 should likewise be withdrawn.

Regarding the Rejections in view of Boschetti

It is indicated in the Office Action that Boschetti '317 discloses a device including a malleable ring member (4) and a membrane or bag (2) fixedly attached to a perimeter of the ring member, wherein the bag is made of cotton, a bias woven fabric (Figs. 1, 3 and 4, column 2, lines 65-68, column 3 and column 4, lines 1-63). Applicant respectfully traverses the rejections of Claims 1-6, 8, 9, 11, and 35 in view of Boschetti.

Amended Claim 1 relates to a retraction device comprising, among other limitations, a malleable ring member and a membrane positioned across the ring member. The ring member is configurable in a flattened, low-profile configuration to be inserted into a surgical incision, the ring member defining a plane when in the low-profile configuration. The membrane is substantially taut “such that it defines a

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substantially planar surface that is one of coplanar with and parallel to the plane of the ring member" when the ring member is in the low-profile configuration.

Applicant respectfully submits that Boschetti '317 fails to disclose at least that the membrane is taut and defines a planar surface that is one of coplanar with and parallel to a plane of the ring when the malleable ring member is in a low-profile configuration. Instead, Boschetti '317 discloses an elastic ring (1) that is placed into a container or bag (2), where the ring resumes its natural state and stretches the container walls into a cup shape (Boschetti '317, FIG. 3 and col. 4, lines 14-24). Being "cup-shaped," the container (2) of Boschetti '317 is slack, and is not substantially taut as disclosed in amended Claim 1 of the present Application. Likewise, the cup-shaped container of Boschetti does not define a planar surface as is recited in Claim 1.

Based on the foregoing, Applicant respectfully submits that Boschetti '317 does not disclose each and every limitation of the invention of Claim 1 and that Claim 1 is allowable over Boschetti '317. Applicant also respectfully submits that Claims 2-6, 8, 9, 11, and 35 are allowable over Boschetti '317 as depending from an allowable claim. Applicant respectfully requests that these rejections be reconsidered and withdrawn.

Regarding the Rejections in View of Kindberg

Claims 1-6, 8, 19, 20 and 26-29 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,143,082 to Kindberg et al. (Kindberg '082), as evidenced by U.S. Patent No. 4,428,375 to Ellman (Ellman '375). In the Office Action it

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is indicated that Kindberg '082 discloses a surgical device to temporarily reposition body tissues and organs including a ring member having cords (20) and a membrane (15) made of a flexible material that could be a mesh structure (FIGS. 1-3, col. 2, lines 56-68, col. 3 and col. 4, lines 1-56). It is also indicated in the Office Action that Kindberg '082 refers to Ellman '375 for examples of pliable surgical materials having a mesh structure and that Ellman '375 discloses a mesh construction with woven or knitted strands (Ellman '375, col. 2, lines 18-68). Applicant respectfully traverses this rejection.

As indicated above, amended Claim 1 relates to a retraction device including a membrane positioned across a malleable ring member and being substantially taut when the malleable ring is in a low-profile configuration such that the membrane defines a planar surface that is one of coplanar with and parallel to a plane defined by the ring member when the malleable ring member is in the low-profile configuration. Independent Claim 26 was amended to include, among other limitations, the membrane being positioned across the ring member and being substantially taut when the ring member is in a low-profile configuration such that the membrane defines a substantially planar surface that is one of coplanar with and parallel to the plane defined by the ring member when the ring member is in the low-profile configuration. Claim 26 further recites "inserting the ring member positioned in the low-profile configuration into the surgical incision."

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Applicant respectfully submits that Kindberg '082 fails to disclose a device having a membrane that is substantially taut when the ring member is in a low-profile configuration. Kindberg further fails to disclose a retraction device configurable in a flattened, low-profile configuration such that the ring member defines a plane and the membrane is one of coplanar with and parallel to the plane defined by the ring member. In contrast, the ring member (12) of Kindberg '082 is positioned at the opening of a bag (15) (Kindberg '082, FIGS. 1-3). In the open and closed conditions of the ring member (12) and bag (15) of Kindberg '082, the bag is shown to be hanging below the ring member (12). Hence, the bag (15) of Kindberg '082 is slack and is not substantially taut as recited in amended Claims 1 and 26 of the present Application. Furthermore, the bag (15) of Kindberg does not define a plane that is coplanar with or parallel to a plane defined by the ring member (12), as recited in Claims 1 and 26.

For at least the foregoing reasons, Applicant respectfully submits that Kindberg '082 does not disclose each and every limitation of the invention of Claims 1 and 26 and that Claims 1 and 26 are allowable over Kindberg '082. Applicant also respectfully submits that Claims 2-6, 8, 19 and 20 are allowable over Kindberg '082 as depending from allowable Claim 1 and that Claims 27-29 are allowable over Kindberg '082 as depending from allowable Claim 26. Applicant respectfully requests that these rejections be reconsidered and withdrawn.

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Regarding the Rejections in View of Rambo

Claims 1, 3, 4-6, 8-13, 26, 27 and 29-31 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,450,983 to Rambo (Rambo '983). Claims 2, 28, and 35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rambo in view of Berman (U.S. Patent No. 5,899,942). Claims 14-25 and 32-34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rambo in view of Balsells (U.S. Patent No. 5,161,806). In the Office Action it is indicated that Rambo '983 discloses a retraction device with a malleable ring member (10) and a substantially taut flexible sleeve or membrane (8) attached to a perimeter of the ring wherein the membrane is made from an elastic material (Figs. 1, 6-9, 16, 18, 40-41, 63 and 66, col. 6, lines 3-67, cols. 7-8 and col. 9, lines 1-33). Applicant respectfully traverses these rejections.

As indicated above, independent Claim 1 relates to a retraction device including a membrane positioned across a malleable ring member and being substantially taut when the malleable ring is in a low-profile configuration such that the membrane defines a planar surface that is one of coplanar with and parallel to a plane defined by the ring member in the low-profile configuration. Independent Claim 26 was amended to include, among other limitations, the membrane being positioned across the ring member and being substantially taut when the ring member is in a low-profile configuration and the membrane defining a substantially planar surface that is one of coplanar with and parallel to the plane defined by the ring member when the ring

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member is in the low-profile configuration. Claim 26 further recites "inserting the ring member positioned in the low-profile configuration into the surgical incision."

Rambo '983, however, discloses a cylindrical sleeve (8) having first and second ends (16, 18) with the periphery of each end of the sleeve being connected to a ring (10, 12) (Rambo '983, FIG. 1 and col. 6, lines 3-20). Applicant respectfully submits that Rambo '983 fails to disclose a device having a membrane that is substantially taut when the ring member is in a low-profile configuration. Rambo further fails to disclose a retraction device configurable in a flattened, low-profile configuration such that the ring member defines a plane and the membrane defines a substantially planar surface that is one of coplanar with and parallel to the plane defined by the ring member.

Thus, for at least the reasons discussed above, Claims 1 and 26 are distinguished over the applied art. Applicant also respectfully submits that Claims 3-6 and 8-13 are allowable as depending from allowable Claim 1 and that Claims 27 and 29-31 are allowable as depending from allowable Claim 26. Applicant also respectfully requests that these rejections be reconsidered and withdrawn.

As noted above, Claims 2, 14-25, 28, 32-34, and 35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Rambo '983 in view of one of Berman '942 or Balsells '806. However, neither Berman '942 nor Balsells '806 correct the deficiencies of Rambo '983 noted above with respect to Claims 1 and 26. The rejected claims all depend from one of Claims 1 and 26. Thus, the asserted combinations of references each fail to disclose all of the elements recited in the rejected claims.

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Accordingly, a prima facie case of obviousness has not been established and hence reconsideration and withdrawal of the rejection of Claims 2, 14-25, 28, 32-34, and 35 in view of their respective asserted rejections is respectfully requested.

Conclusion

For at least the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, issuance of a Notice of Allowability is most earnestly solicited.

Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Any arguments in support of patentability and based on a portion of a claim should not be taken as founding patentability solely on the portion in question; rather, it is the combination of features or acts recited in a claim which distinguishes it over the prior art.

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The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, John F. Heal, at (949) 713-8283 to resolve such issues promptly.

Sincerely,

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